

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.09.2019
CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.18873 of 2017
and W.M.P.No.20389 of 2017

Ebramusa

... Petitioner

versus

1.Indian Bank,
Asset Recovery Management Branch,
Rep. by its Authorised Officer,
55, Ethiraj Salai,
Chennai - 600 008.

2.B.Venkataraman
3.Banumathikannan
4.Subhasree
5.Lalitha Ganesh

6.M/s.G.K.Movie Land,
Rep. by its Proprietor,
G.Gopalakrishnan,
121, Anna Salai,
Chennai - 600 006.

7.S.K.Jeevanadam
8.Thirumurugan
9.M.A.Tazu

10.Joint Sub-Registrar I,
Sub-Registrar's Office,
Chennai North,
Chennai - 600 001.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned order dated 11.07.2017 made in RA(SA)No.41 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, in confirming the order, dated 20.12.2010 made in S.A.No.155 of 2010 on the file of Debts Recovery Tribunal-I, Chennai and to quash the same, consequently directing the first respondent to set aside sale conducted on 15.05.2010 and all consequential proceedings and to issue an order of injunction

restraining the respondents or their men or agents or anybody acting through them from in any manner interfering with or in any manner dispossessing the peaceful possession and enjoyment of the property by the petitioner herein with respect to the property bearing Old Door No.49, New Door No.106, Ramasamy Street, comprised in S.No.3159, VOC Nagar, Block 28 measuring 1 ground and 71 square feet pending disposal of the above writ petition.

For Petitioner	: Mr.Sathish for Mr.N.Damodaran
For Respondent No.1	: Mr.T.Sundararajan
For Respondent Nos.8 & 9	: No Appearance
For Respondent No.10	: Mr.A.Ansar Government Advocate

O R D E R

(Order of the Court was made by R.PONGIAPPAN, J)

The petitioner has filed the present writ petition, for a writ of certiorarified mandamus, calling for the records relating to the impugned order dated 11.07.2017 made in RA(SA)No.41 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, in confirming the order dated 20.12.2010 made in S.A.No.155 of 2010 on the file of the Debts Recovery Tribunal-I, Chennai and to quash the same. Further, the petitioner has prayed for an order of injunction, restraining the respondents or their men or agents or anybody acting through them from in any manner interfering with or in any manner dispossessing the peaceful possession and enjoyment of his property, bearing Door No.49, New No.106, Ramasamy Street, comprised in S.No.3159, VOC Nagar, Block 28, measuring 1.71 sq.ft. pending disposal of this Writ Petition.

2. Brief facts leading to the filing of the Writ Petition are that, the property referred above, was originally purchased by Dr.V.Srinivasan from one Gnanandavalli Ammal by way of Sale Deed dated 07.04.1960. The said Srinivasan had expired on 14.09.1979 and his widow Parvathi Srinivasan had expired on 22.02.1991 leaving behind his two sons, namely, Dr.S.Balasubramaniam and S.Swaminathan to succeed their estate. Subsequently, in the family arrangement made between S.Swaminathan and Dr.S.Balasubramaniam, the property in question was allotted to Dr.S.Balasubramaniam along with respondents 2 to 5 herein, he constituted a Hindu Joint Family and was in possession and enjoyment of the said property. According to the petitioner, Dr.S.Balasubramaniam and his 4 children had equal shares, i.e. $1/5^{\text{th}}$ share each in the

said property. However, Dr.S.Balasubramaniam died on 29.06.2005 and his wife Suguna had predeceased him on 08.03.1999. Consequent to their death, respondents 2 to 5 became entitled to 1/4th share in the property.

3. While at the time when Dr.S.Balasubramaniam was alive, without reference to the respondents 2 to 5, he had mortgaged the said property by depositing title deeds for the loan obtained by the sixth respondent, namely, M/s.G.K.Movie Land, the principal debtor to the first respondent Bank. In other words, he stood as a Guarantor to the loan availed by the sixth respondent. In addition to the above, the seventh respondent had also deposited title deeds of his property with the first respondent Bank as security.

4. The petitioner had purchased the property under dispute vide Document No.255 of 2009 on 14.08.2009 from the legal representatives of Dr.S.Balasubramaniam, namely, respondents 2 to 5 herein and the possession of the property was also handed over to him on the same day. While the facts stand thus, he came to know that the first respondent herein initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act [hereinafter referred to as 'SARFAESI Act'] for bringing the said property for sale.

5. The erstwhile owners of the legal representatives of Dr.S.Balasubramaniam [respondents 2 to 5], challenged the sale notice by way of an appeal in S.A.No.214 of 2009 on the file of the Debts Recovery Tribunal-I, Chennai. To protect his interest, as the purchaser, the petitioner had deposited a sum of Rs.20,00,000/-. However, the Debts Recovery Tribunal, by its order dated 12.11.2009 vacated the interim stay already granted on technical ground of non-disclosure of sale in favour of the petitioner, with a further direction to the first respondent Bank to proceed with the SARFAESI proceedings and ultimately, the said SARFAESI Appeal was dismissed for default on 09.06.2010.

6. While so, to protect his right, the petitioner has also filed another appeal in S.A.No.280 of 2009 before the Debts Recovery Tribunal-I, Chennai and the Tribunal was pleased to pass an order of interim stay, restraining the first respondent Bank from taking further proceedings under the SARFAESI Act, on condition

to deposit a sum of Rs.55,00,000/- on or before 18.01.2000. On 28.01.2010, the petitioner has filed an application, seeking for extension of time for payment of the said amount and he has also produced 3 cheques for Rs.35,00,000/- [(i) Rs.5,00,000/- dated 05.02.2010, (ii) Rs.10,00,000/- dated 25.02.2010 and (iii) Rs.20,00,000/- dated 27.03.2010]. However, the Debts Recovery Tribunal-I, Chennai, has dismissed the appeal filed by the petitioner.

7. In the meanwhile, the first respondent Bank had advertised by pamphlets and other modes so as to bring the property for sale on 15.05.2010. The stipulated tender condition reveals the fact that no right has been retained by the first respondent Bank to extend the time for payment of 25% of the bid amount including EMD, which should be payable on the same date and the balance amount should be payable within 15 days from the date of confirmation of sale by the Bank. Further, no right has been conferred upon the first respondent Bank to permit the successful bidder to deposit 25% of the sale amount in installments, so also the payment of the balance amount after the period of 15 days from the date of confirmation of sale. Apart from that, the first respondent Bank did not obtain the Valuation Certificate for fixing the value of property, which is mandatory provision under the SARFAESI Act.

8. Further, in the public auction conducted on 15.05.2010, the eighth respondent has been declared as successful bidder for a sum of Rs.77,01,000/-. Challenged the auction sale dated 15.05.2010 conducted by the first respondent Bank in confirming the sale in favour of the eighth respondent before the Debts Recovery Tribunal-I, Chennai, the petitioner has filed SARFAESI Application in S.A.No.155 of 2010 under Section 17 of the SARFAESI Act, by raising number of grounds and the same was dismissed on 20.12.2010.

9. Being aggrieved over the said order passed by the Debts Recovery Tribunal-I, Chennai, the petitioner has preferred an Appeal in RA(SA)No.41 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai. In the meanwhile, he has also filed Interlocutory Application in I.A.No.592 of 2007 seeking to implead the eighth respondent/auction purchaser as well as the ninth respondent herein and the same was allowed on 27.12.2012.

10. Before the Debts Recovery Appellate Tribunal, the learned counsel for the petitioner informed to the Court that, the petitioner was willing to deposit further amount of Rs.20,00,000/- to show his bona fide for the purpose of entertaining the said appeal. During the pendency of the regular appeal before the Debts

Recovery Appellate Tribunal, the petitioner came to the knowledge that the auction purchaser had not complied with the terms and conditions of the tender-cum-auction conditions flouted by the first respondent Bank. Hence, the petitioner was constrained to file the application on 23.01.2012 seeking particulars regarding the alleged sale conducted by the first respondent Bank and also the due compliance of the terms and conditions of the tender-cum-auction document by the auction purchaser. The said application filed under the Right to Information Act on 23.01.2012 and the petitioner received a reply dated 02.03.2012 from the first respondent Bank.

11. On a perusal of the reply from the first respondent Bank reveals the fact that, the Bank had suppressed the vital facts from the knowledge of the Debts Recovery Tribunal-I, Chennai. It is clear that the eighth respondent herein had not complied with the terms and conditions of the auction sale and he has paid the following bid amount;

- (i) Demand Draft for Rs.3,75,000/- dated 15.05.2010
- (ii) Demand Draft for Rs.3,75,000/- dated 15.05.2010
- (iii) Demand Draft for Rs.5,00,000/- dated 21.05.2010
- (iv) Demand Draft for Rs.6,75,500/- dated 21.05.2010

12. From the above dates and payments, it is clear that on the date of auction sale, namely, on 15.05.2010, the entire bid amount was not paid, only a sum of Rs.7,50,000/- was paid on the said day and the balance amount, out of 25% of the sale consideration viz. Rs.11,75,500/- was paid under two Demand Drafts only on 21.05.2010, the said payment cannot be stated to be in compliance of the terms and conditions of the auction sale, namely, the first part of the condition no.7. Further, the petitioner came to the knowledge that the balance payment of 75% of the bid amount was not paid within 15 days from the date of auction and in fact, the same was paid between the dates commencing from 09.06.2010 and 30.06.2010, which payments admittedly goes beyond 15 days time, as provided in the tender-cum-auction sale conditions flouted by the first respondent Bank.

13. After knowing the said details, the petitioner has filed Interlocutory Application in I.A.No.694 of 2013 in RA(SA)No.41 of 2011 for raising additional grounds before the Debts Recovery Appellate Tribunal, Chennai and the same was opposed by the first respondent Bank as well as the eighth respondent questioning the locus standi and limitation. However, the Debts Recovery Appellate Tribunal has allowed the above said Application. As against which, respondents 8 and 9

had filed W.P.No.3827 of 2014 on the file of this Court and the same was dismissed. On 11.07.2017, the Debts Recovery Appellate Tribunal, Chennai, had dismissed the appeal in RA(SA)No.41 of 2011, without considering the question of law and facts involved therein in its true perspective.

14. Pending the above proceedings before the Tribunal, the legal representatives of late Dr.S.Balasubramaniam [respondents 2 to 5] have filed a Civil Suit in C.S.No.634 of 2010 before this Court. After disposal of the same, the vendors of the petitioner have preferred O.S.A.No.137 of 2014 and the same is pending before this Court. Since the petitioner having no other alternative or efficacious remedy has filed this Writ Petition for the reliefs referred above.

15. Resisting the claim made by the petitioner, the first respondent Bank has filed counter affidavit stating that, M/s.G.K.Movie Land / 6th respondent availed a Secured Overdraft Facility from the first respondent on 18.07.1995. For the said loan facility, Dr.S.Balasubramaniam and S.K.Jeevanandam had stood as Guarantors and mortgaged their respective immovable properties, as a security for the loan availed by M/s.G.K.Movie Land. As the loan amount was classified as NPA since 30.09.1997, the first respondent initiated SARFAESI proceedings and issued a demand notice dated 25.08.2002 under Section 13(2) of the SARFAESI Act. However, the first respondent took possession of the secured asset on 05.03.2005 itself.

16. After the demise of Dr.S.Balasubramaniam, on 29.06.2005, the legal representatives, who arrayed as respondents 2 to 5 herein, have sold the secured asset to the petitioner by way of Sale Deed dated 14.08.2009 registered as Document No.255 of 2009 on the file of S.R.O., Sowcarpet. As per Section 13(13) of the SARFAESI Act, transferring the secured asset by way of sale, is illegal. Accordingly, the sale effected in favour of the petitioner is void transaction barred under Section 13 (13) of the SARFAESI Act. In the said circumstances, the petitioner cannot claim any right over the property under dispute. The claim made by the petitioner is not legally enforceable.

17. Even in the Sale Deed dated 14.08.2009, the petitioner, who is alleged to have purchased the secured asset has paid only a sum of Rs.5,00,000/- to the vendors, out of total sale consideration of Rs.60,00,000/- and the balance of Rs.55,00,000/- has been

agreed to be paid to the first respondent Bank to the loan account of M/s.G.K.Movie Land and the said amount was also not paid by the petitioner.

18. Admittedly, the legal representatives of late Dr.S.Balasubramaniam had challenged the earlier sale notice dated 07.09.2009 issued by the first respondent in S.A.No.214 of 2009 before the Debts Recovery Tribunal-I, Chennai and obtained an order of interim stay. Thereafter, the petitioner has filed another Appeal in S.A.No.280 of 2009, challenging the earlier sale notice, in which, the Tribunal had passed a conditional order dated 17.12.2009, directing the petitioner to deposit the sale consideration of Rs.55,00,000/- to the first respondent. However, the petitioner had failed to comply with the said order and hence, S.A.No.280 of 2009 was dismissed.

19. The plea raised by the petitioner that the auction purchaser had not made payment of 25% of the bid amount in the same day, as prescribed under Rule 9(3) of the Security Interest (Enforcement) Rules, 2002. Further, the said plea is available only to the mortgagor, who mortgaged the property and not to the petitioner, who purchased the property through Sale Deed, which is forbidden by law. Though the legal representatives of the mortgagor, namely, respondents 2 to 5 herein had filed S.A.No.214 of 2009, challenging the sale notice dated 07.09.2009, the same was dismissed. Subsequently, respondents 2 to 5 have not challenged further actions of the Bank and therefore, they have waived their right.

20. It is the case of the petitioner that his vendors sought information from the respondent Bank by a letter dated 23.01.2012 under the Right to Information Act and the Bank had given a reply dated 02.03.2012 and based on that information, the petitioner came to know that Rule 9(3) of the Security Interest (Enforcement) Rules, 2002 has not been complied with. On 02.03.2012 itself, the mortgagors are very well know the fact about the compliance of Rule 9(3) of the Security Interest (Enforcement) Rules, 2002, but they have not challenged the same and therefore, they have waived the mandatory provisions. In such circumstances, the petitioner has no legal right to question the same and there was no equity in the petitioner questioning the auction sale conducted by the first respondent.

21. The suit filed by the legal representatives of the deceased mortgagor in C.S.No.634 of 2010 on the file of this Court was rejected. The appeal preferred in

O.S.A.No.137 of 2014 was also dismissed as withdrawn on 17.08.2017. Accordingly, the grounds raised by the petitioner to set aside the order passed by the Debts Recovery Appellate Tribunal is not maintainable. Further, there was no irregularity in the sale and the Appellate Tribunal has rightly dismissed the appeal and the writ petition filed by the petitioner is devoid of merits.

22. Now, on going through the entire pleadings set out by either side, it appears that originally the suit schedule property belongs to late Dr.S.Balasubramaniam, who is the family member of the respondents 2 to 5. The said Balasubramaniam died on 29.06.2005 and his wife Suguna had predeceased him on 08.03.1999. Before his death, he created a mortgage by depositing title deeds to the loan obtained by the sixth respondent, namely, M/s.G.K.Movie Land. Since the loan availed from the first respondent Bank becomes NPA, the SARFAESI proceedings initiated against the property under dispute.

23. First of all, we have to decide whether the petitioner being the third party entitled to challenge the sale made by the first respondent, in otherwise, the purchase made by the petitioner has not been disputed either from the legal representatives of the deceased Dr.S.Balasubramaniam or from the respondents. Therefore, the petitioner being the aggrieved party has filed this Writ Petition. In the said circumstances, it is useful and relevant to consider the judgment of this Court in THIRUMURUGAN vs. EBRAMUSA reported in 2014-4-L.W.357, wherein, the Division Bench has held as follows;

"14. A conspectus reading of the above, it would make clear that any person (including borrower) who is aggrieved, can make an application before the Debts Recovery Tribunal. Similarly, any person against whom any adverse order is passed, can file an appeal before the Debts Recovery Appellate Tribunal. Both the provisions stipulates the time limit within which, an application and appeal thereof has to be filed. In fact, the word 'any person' mentioned in Section 17 has been considered and explained by the Honble Supreme Court in United Bank of India versus Satwati Tondon reported in 2010 (8) SCC 110, wherein, it has been held as under in para 17:

"17. The expression 'any person' used in Section 17(1) is of wide

import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

Therefore, whoever is aggrieved or affected by the action initiated under the provisions of the SARFAESI Act, he is absolutely having remedy by approaching the Debts Recovery Tribunal."

24. Now applying the said principle already laid down by this Court, in this case also during the pendency of the SARFAESI proceedings, the petitioner has purchased the property under dispute on 14.08.2009. Only after purchasing the property by the petitioner, the first respondent initiated sale proceedings and conducted the auction. So, apparently the petitioner becomes aggrieved person and therefore, he is entitled to file this Writ Petition. Subsequent to the purchase made by the petitioner, on 07.09.2009, the first respondent Bank issued a sale notice in question for recovery for a sum of Rs.1,79,69,401/- fixing the upset price of the property of Rs.75,00,000/-.

25. After issuing the sale notice, the legal representatives of Dr.S.Balasubramaniam, challenged the same by filing S.A.No.214 of 2009, in which, the Debts Recovery Tribunal-I, passed an order of stay, subject to the condition that the legal representatives of the deceased Dr.S.Balasubramaniam has to deposit the entire loan amount. Since the said order has not been complied with by them, S.A.No.214 of 2009 was dismissed.

26. Thereafter, the petitioner has challenged another one sale notice in S.A.No.280 of 2009, in which, the Debts Recovery Tribunal-I, passed a conditional order, directing the petitioner to make payment of Rs.55,00,000/- on or before 18.01.2010. Instead of depositing the entire amount of Rs.55,00,000/-, the legal representatives of the deceased Dr.S.Balasubramaniam had deposited only Rs.10,00,000/- and produced 3 cheques, for Rs.5,00,000/-; Rs.10,00,000/-; and Rs.20,00,000/-. After depositing as above, time was extended but

aforesaid amounts were not deposited by the petitioner. Only in the said circumstances, the first respondent Bank issued fresh auction notice for the sale to be held on 15.05.2010. In the said sale, respondents 8 and 9 were participated and purchased the property for a sum of Rs.77,01,000/-.

27. In this occasion, the contention raised by the learned counsel for the petitioner is that, as per the condition stipulated in the sale notice, the auction purchaser has not paid the money, within the stipulated period of 15 days. He has deposited the sale amount on piece meal basis, for which, the Bank extended the time to 45 days. Furthermore, another contention raised by the learned counsel for the petitioner is that, inspite of the fact, M.A.Tazu / 9th respondent, has not even participated in the auction proceedings, whereas his name was also added as auction purchaser, which is nothing but illegal.

28. Only on the part of two grounds, the petitioner has challenged the sale made in favour of the respondents 8 and 9. Before filing this Writ Petition, the petitioner has challenged the sale on the ground that the borrower Dr.S.Balasubramaniam has no right to mortgage another property including the share, as vendors. In this regard, it is admitted on either side, the suit has been preferred in C.S.No.634 of 2010 to declare the mortgage done by Dr.S.Balasubramaniam, as null and void. Only after flouting the said order, the sale has been conducted. According to the petitioner, since the auction purchaser has not been deposited 75% of the bid amount within the stipulated time, the sale made in his favour is bad in law.

29. On the other hand, the learned counsel for the first respondent Bank made submissions that the petitioner has no locus standi to challenge the sale conducted by the first respondent Bank. In this regard, it is to be noted only after purchasing the property from the legal representatives of the deceased Dr.S.Balasubramaniam, the petitioner is trying to create so many hurdles by instituting various litigations. According to the respondents, the petitioner has no right to object the proceedings initiated by the first respondent. In the above circumstances, while at the time of disposing R.A.(SA)No.41 of 2011, the Chairperson, Debts Recovery Appellate Tribunal has held that, since symbolic possession of the property was taken over by the Bank Authorities on 05.03.2005, the sale made in favour of the petitioner on 14.08.2009 was null and void under Section 13(13) of the SARFAESI Act.

30. In this regard, on going through the entire submissions made by the learned counsel for the petitioner, there was no dispute that the first respondent Bank has taken symbolic possession on 05.03.2005 and hence, from the said date onwards, it was construed as the possession of the property is with the Bank. Only in the said circumstances, the petitioner purchased the property on 14.08.2009, so he made purchase only after the date, on which, the symbolic possession was taken over by the Bank. In this occasion, it is necessary to extract Section 13(13) of the SARFAESI Act, which reads as under;

"13(13).No borrower shall, after receipt of notice referred to in sub-section(2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

31. So applying the said Act, it is clear that the sale made in favour of the petitioner by the legal representatives of the deceased Dr.S.Balasubramaniam, is null and void. However, the learned counsel for the petitioner would contend that, even though the sale made in favour of the petitioner is after the date, on which, the symbolic possession was taken over by the Bank, considering the fact that the auction purchaser violated the sale conditions stipulated in the sale notice and hence, the sale made by the first respondent Bank became illegal. In this regard, he relied on the judgment of this Court in THE AUTHORISED OFFICER, INDIAN BANK vs. TETRAHEDRON LTD. reported in 2013 (1) CTC 353, in which, the Division Bench has held as follows;

"28.The proceedings in question was initiated by the Bank under the SARFAESI Act. The Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules") provides for the measures to be taken by the Bank right from the issuance of Notification under sub-section (2) of Section 13 of the SARFAESI Act. Rule 8 deals with sale of immovable secured assets. Rule 9 provides for time of sale, issue of Sale Certificate and delivery of possession, etc. Sub-rule (3) of Rule 9 mandates that the purchaser shall pay 25% of the amount after the sale is concluded and in default of such deposit, the property shall be sold again. Sub-rule (4) of

Rule 9 provides that the balance amount shall be paid on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties. Sub-Rule (5) of Rule 9 clearly gives a mandate that in case the amount is not paid within the time prescribed in the Notification or before the extended period, the deposit shall be forfeited and the property shall be re-sold. The Rule makers have only prescribed that the amount would be forfeited. There is no mention that the amount would be forfeited to the Government or to the Bank."

32. Further, in the case of LAKSHMI MOHAN vs. AIR TECH PROJECTS ENGINEERS PVT. LTD. reported in 2013 (3) CTC 22, the Division Bench of this Court observed as under;

"With the admission fairly made by the Bank through its Counsel before the Court that non-compliance of the mandatory conditions would make a person ineligible to participate in the Auction proceedings, we hold that the sale made in favour of the Lakshmi Mohan and Premkumar, Writ Petitioners herein, is liable to be set aside."

33. In P.KUMARAN vs. THE DEBTS RECOVERY APPELLATE TRIBUNAL reported in 2011 (6) CTC 369, the Division Bench of this Court has held as follows;

"27. Coming to the facts of this case, as has been already noted, the Auction Purchaser had admittedly failed to deposit 75 percent of the amount within the period of 15 days. After a period of 18 days, he made an Application to the Recovery Officer to permit him to deposit the money which was granted. Accordingly, he paid the amount and the Sale Certificate was also issued. Later the forfeiture was ordered on the ground that the Recovery Officer has no power to extend the time. That order was questioned, which has resulted in the filing of the present Writ Petition. On the above factual background, it is to be now considered

as to whether the extension granted by the Recovery Officer to the Petitioner could be sustained. In the auction sale notice, condition no.3 reads as follows:-

"The successful bidder to pay 25 percent of the bid amount (less the EMD) immediately on the sale being knocked down in his favour and the balance money within 15 days."

A reading of the above condition would show that the Recovery Officer has not prescribed any clause in the terms and conditions of sale allowing him to extend the time beyond the period specified under the Rules for the purchaser to deposit the balance price within a period of 15 days. In the absence of the same, the extension granted in favour of the Petitioner-Auction Purchaser cannot be sustained. In this context, we may refer to the judgment of the Apex Court in Himadri Coke and Petro Limited v. Soneko Developers Pvt. Ltd., and others, (2006) 132 Comp.Case 696 (SC). The Apex Court while considering a similar situation has observed as follows:

"As far as Respondent No.1 is concerned, we are of the view that it was bound by the terms and conditions of sale as was the authority concerned. It was not up to them to extend the dates for submission of the balance price when there was no clause in the terms and conditions of the sale allowing the authority to extend the time beyond the period specified in the advertisement for making the initial deposit or the balance price."

34. Even though there is a principle laid down by this Court as above, if the bid amount has not deposited by the auction purchaser within a stipulated time, it is necessary for the Bank to arrange for re-auction. The Hon'ble Apex Court has taken a different view in this area in the case of GM, SRI SIDDESHWARA CO-OPERATIVE BANK LTD. vs. IKBAL reported in 2013 (5) CTC 200, wherein, it has held as follows;

" 23. There is no doubt that Rule 9(1) is mandatory but this provision is

definitely for the benefit of the Borrower. Similarly, Rule 9(3) & Rule 9(4) are for the benefit of the Secured Creditor (or in any case for the benefit of the Borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the Borrower and the provisions contained in Rule 9(3) & Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the Borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard."

35. More than that, the judgment in GALADA POWER AND TELECOMMUNICATION LTD. vs. UNITED INDIA INSURANCE COMPANY LTD. reported in (2016) 14 SCC 161, the Hon'ble Apex Court has held as follows;

"14..... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it.

15. In Manak Lal v. Prem Chand Singhvi (AIR 1957 SC 425), it has been held:

"8..... It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R. has observed in Vyvyan v. Vyvyan (1861) 30 Beav 65)"

36. So, the principles laid down by the Hon'ble Apex Court clearly reveals the fact that even though the provision mandated under Rule 9(1), Rule 9(3) and Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, the same has to be waived by a party for whose benefit such provision has been made. In fact, the said provision has been made in favour of the borrower. Since the petitioner has purchased the property after taking symbolic possession by the Bank, he cannot be treated as a borrower. In otherwise, the sixth respondent, who is the actual borrower, has not participated in the sale proceedings. Even after ordering to deposit Rs.55,00,000/-, the petitioner has not complied with the said order. Since there is a provision for waiving the time extended by the Bank for the payment of balance sale proceedings, it cannot be said that the sale confirmed in favour of the auction purchaser is violative of the Act, in which, the first respondent Bank initiated proceedings. The Debts Recovery Appellate Tribunal has also took the same view and held that the transfer made in favour of the petitioner was null and void and thereby, he cannot agitate the sale made in favour of the auction purchaser.

37. The second ground raised by the petitioner is that, even after knowing the fact M.A.Tazu / 9th respondent was not participated in the auction, the Sale Certificate was issued in his name along with one K.K.Thirumurugan. It is admitted on either side that K.K.Thirumurugan was the bidder but the Sale Certificate was issued after including the name of M.A.Tazu. In this regard, the learned counsel for the first respondent Bank would contend that since the auction purchaser and M.A.Tazu are the partners of the same firm, they requested to issue Sale Certificate in the name of both partners.

38. It is not in dispute that the property has fetched the highest value in the auction sale. In otherwise, either the petitioner or the legal representatives of the deceased Dr.S.Balasubramaniam did not bring any person for offering best price more than the sale price quoted by the auction purchaser. In fact, the petitioner has not participated in the auction proceedings. In the said circumstances, the petitioner has no right and authority to raise such objections in respect to the sale made by the Bank Authorities. The Tribunal has correctly appreciated the evidence in right perspective and dismissed the appeal filed by the petitioner.

39. For the foregoing reasons, Writ Petition stands dismissed. No Costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sri
To

- 1.The Debts Recovery Appellate Tribunal,
Chennai.
- 2.The Debts Recovery Tribunal-I,
Chennai.
- 3.Joint Sub-Registrar-I,
Sub-Registrar's Office,
Chennai North,
Chennai- 600 001.
- 4.The Authorised Officer,
Indian Bank,
Asset Recovery Management Branch,
55, Ethiraj Salai,
Chennai - 600 008.

+2ccs to Mr.N.Damodaran , Advocate SR.No. 81392
+1cc to Mr.Antony selvam , Advocate SR.No. 87123
+1cc to Mr.T.Sundar raja , Advocate SR.No. 81017

W.P.No.18873 of 2017
and W.M.P.No.20389 of 2017

A.SK(24/10/2019)

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